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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,070	10/31/2003	Bernhard Awolin	J&J-5083	3738

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EXAMINER	
HAND, MELANIE JO	
ART UNIT	PAPER NUMBER
3761	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/700,070	AWOLIN ET AL.	
	Examiner	Art Unit	
	MELANIE J. HAND	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 January 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-39* is/are pending in the application.

4a) Of the above claim(s) *25-39* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed January 8, 2008 have been fully considered but they are not persuasive.

With respect to arguments regarding the rejection of claims 1-5, 7-20 and 22-24 as unpatentable over Brown in view of Li: Applicant argues that the combined teaching of Brown and Li does not teach one of ordinary skill in the art the simultaneous dual presence of a liquid resistant zone and a liquid permeable zone because Brown has only the liquid resistant zone, and Li does not remedy this deficiency. This is not persuasive because it is noted that the features upon which applicant relies (i.e., a simultaneous liquid-resistant and liquid permeable zone) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Further, the combined teaching of Brown and Li meets the limitations of claim 1 because Brown only teaches a liquid-permeable zone (applicant incorrectly refers to a liquid-resistant zone taught by Brown) and Li teaches that it is known in the art to apply a surfactant to certain parts of a liquid-permeable zone of material such as that taught by Brown so as to create new zones of hydrophobic material. As to applicant's argument that a teaching of a hydrophilic zone does not teach a liquid permeable zone, a hydrophilic material is wetted on its surface, thus the hydrophilic zone must be permeable, at least to some extent. Thus, the tampon of the combined teaching of Brown and Li teaches an overwrap material that "comprises a liquid-permeable zone and a liquid-resistant zone", which is exactly what is recited in claim 1. The rejection of claim 1, specifically the teaching of Li, is restated to offer further clarity.

Applicants' arguments with regard to dependent claims 8, 17, 18 and 23 have been fully considered but are not persuasive as Applicants' arguments depend entirely on Applicants' arguments regarding the rejection of claim 1, which have been addressed *supra*.

With respect to arguments regarding the rejection of claims 6 and 21 as unpatentable over Brown in view of Li and further in view of Olson: Applicant's arguments based upon arguments with respect to claim 1 have been addressed *supra*. In response to applicant's argument that Olsonis concerned with an interlabial pad and thus is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the prior art reference of Li concerns itself with an absorbent article, of which tampons are another example, therefore it is the Office's position that the prior art of Li is analogous art and is also reasonably pertinent to the particular problem with which the applicant is concerned, i.e. providing an interlabial absorbent article with sufficient absorbent capacity and comfort.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

2. Claims 1-5, 7-20 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown, Jr. (U.S. Patent No. 5,185,010) in view of Li et al (U.S. Patent Application Publication No. 2002/0169429).

With respect to **Claims 1,4,5,7,9-16,19,20,22,24:** Brown teaches a tampon formed from absorbent material 12 cut into a rectangle with outer end 21 having a length, thickness and width, wherein said width is measured between the two edges of absorbent material 12 that will correspond to the introduction and withdrawal ends of the tampon once said tampon is formed. The rectangular tampon precursor material also contains liquid-permeable plastic overwrap material 10 adhered to inner surface 13 of absorbent material 12 to form seal 16. Overwrap material 10 extends beyond the outer edge 21 of material 12 to form tab 14. Overwrap 10 is considered herein to have a width generally corresponding to the width of material 12, since the fold-over regions 18 are narrow. Seals 16 are formed at the edge of absorbent material 12 that corresponds to the withdrawal end of said tampon. A tampon is formed by winding absorbent material 12 in a spiral fashion starting at end 20. (Fig. 1c) (Col. 2, lines 67,68)

Brown does not teach an overwrap material having a liquid-resistant zone. Li teaches that treating nonwoven webs to change their hydrophilicity (including eliminating the hydrophilicity) is known in the art. Therefore, it would be obvious to one of ordinary skill in the

art to treat the overwrap taught by Brown with a surfactant in certain portions of the overwrap that overlie the absorbent core and contact the vaginal wall of the user such that the overwrap 10 has a liquid-permeable zone and a liquid-resistant zone with a reasonable expectation of success to impart desired wetting characteristics to the overwrap material of the tampon adjacent the user's skin. The portion of overwrap 10 that folds over said second edge is treated and thus becomes liquid-resistant.

With respect to **Claim 8,23:** Brown does not explicitly teach an overlap material 10 that is treated to be liquid impermeable. Li teaches that treating nonwoven webs to change their hydrophilicity (including eliminating the hydrophilicity) is known in the art. Therefore, it would be obvious to one of ordinary skill in the art to treat the overwrap taught by Brown to be liquid impermeable as taught by Li with a reasonable expectation of success to impart.

With respect to **Claims 17,18:** Brown teaches that different sealing methods may be used and specifically cites heat sealing and adhesives. ('010, Col. 3, lines, 27, 28, 52, 53)

3. Claims 6 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown, Jr. (U.S. Patent No. 5,185,010) in view of Li et al (U.S. Patent Application Publication No. 2002/0169429) as applied to claims 1, 4, 16 and 19 above, and further in view of Olson et al (U.S. Patent No. 5,916,205).

With respect to **Claim 6,21:** Brown teaches that the overlap material must be heat-sealable and that it is a thermoplastic nonwoven, but does not explicitly teach an apertured film. Li also does not teach an apertured film. Olson teaches cover material 102 for forming covers 46 for plural

devices 20 that comprises an apertured thermoplastic film. ('205, Col. 20, lines 28-30, 33) With respect to Claim 27, by teaching an apertured film, Olson is also teaching that perforations can be made in cover material 102 that enable the separation of adjacent absorbent segments from one another in the production process, said perforations or apertures defining separation lines. Olson teaches that this is a suitable material for a cover sheet for an absorbent interlabial device ('205, Col. 20, lines 30-32), therefore it would be obvious to modify the overwrap material taught by Brown to further comprise an apertured thermoplastic film as taught by Olson.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Examiner, Art Unit 3761

/Tatyana Zalukaeva/
Supervisory Patent Examiner, Art Unit 3761